Date Mailed
October 7, 2004

BEFORE THE

PUBLIC SERVICE COMMISSION OF WISCONSIN

Application of Wisconsin Public Service Corporation for a Certificate of Public Convenience and Necessity for Construction of a Large Electric Generating Plant with Associated Facilities, Known as Weston Unit 4, at its Existing Weston Generating Station Located in Marathon County

6690-CE-187

FINAL DECISION

Introduction

This is the final decision regarding the proposal filed by Wisconsin Public Service Corporation (WPSC) to construct a new electric generating plant, known as Weston Unit 4 (Weston 4), at its existing Weston Generating Station located south of Wausau in Marathon County. The new facility would use super-critical pulverized coal (SCPC) technology and would consist of a single 515 megawatt (MW) baseload unit. Sub-bituminous coal would be the principal fuel for the new unit.

The Commission received the initial Certificate of Public Convenience and Necessity (CPCN) application for the approval needed to build Weston 4 on September 26, 2003. WPSC proposes to place Weston 4 in service in 2008 and to finance this new generating unit using a rate base approach.

On February 10, 2004, the Commission issued a determination that WPSC's CPCN application for the Weston 4 project was complete. This triggered the 180-day statutory period under which the Commission is required to conduct its review of this CPCN application.

Because of the complexity of this coal-fired power plant proposal, the Commission extended this period to 360 days by petitioning the Dane County Circuit Court on May 17, 2004, for additional review and received the necessary order, pursuant to Wis. Stat. § 196.491(3)(g)1. During this period Commission staff prepared a final Environmental Impact Statement (EIS) for this project, in collaboration with staff of the Wisconsin Department of Natural Resources (DNR), which was subsequently introduced into the hearing record.

The Commission held technical hearings in this docket before Administrative Law Judge David Whitcomb from August 3 to 5, 2004. At these hearings, witnesses with technical and professional expertise testified on behalf of the parties, Commission staff, and DNR staff. In addition, the Commission held a public hearing in the project area on August 10, 2004, seeking the testimony of interested members of the public. The parties then submitted briefs and reply briefs to the Commission on September 3 and 10, 2004, respectively. At its open meeting on September 23, 2004, the Commission considered this matter in oral deliberations.

Persons who appeared and testified are listed in the Commission's files.

This application is GRANTED, subject to conditions.

Findings of Fact

1. Energy conservation, renewable resources, or other energy priorities listed in Wis. Stat. §§ 1.12 and 196.025, or their combination, are not cost-effective or technically feasible alternatives that could totally displace the project proposed in this docket.

2. The demand forecast used by Commission staff in its Electric Generation Expansion Analysis System (EGEAS) modeling representing a 2.3 percent annual demand growth is reasonable and demonstrates a need for new baseload generation.

3. Weston 4 and commitments to secure additional energy conservation and renewable resources satisfy the reasonable needs of the public for an adequate supply of electric energy.

4. The public convenience and necessity require WPSC to construct Weston 4, at an estimated cost of $752,441,209 in year of occurrence dollars, subject to the conditions specified in this final decision.

5. The Weston 4 project at the North Site is in the public interest after considering alternative locations, individual hardships, engineering, economic, safety, reliability, and environmental factors.

6. The Weston 4 project located at the North Site will utilize brownfields to the extent practicable.

7. The Weston 4 project will not have undue adverse impact on other environmental values.

8. The Weston 4 project will not unreasonably interfere with orderly land use and development plans for the area involved.

9. The final EIS accurately describes the environmental effects of this project.

10. It is not in the public interest for the Commission to require WPSC to substitute a dry condenser cooling system for the proposed wet cooling tower system.

11. The addition of the Weston 4 facility to WPSC's electric supply portfolio will not have a material adverse impact on competition in the relevant wholesale electric service market per Wis. Stat. § 196.491(3)(d)7, because the output will be sold to native load customers at prices, terms and conditions regulated by the Commission.

12. WPSC's generation alternative evaluation method utilizing proxy costs for independent power producer (IPP) projects is reasonable. The Commission approved a similar approach in a recent construction case for Madison Gas and Electric Company (MGE).

13. WPSC's proposal for rate-based financing for the Weston 4 project is reasonable.

14. It is reasonable for WPSC to earn a current return on 100 percent of construction work in progress at its weighted cost of capital..

15. The conditions attached to the CPCN for Weston 4, as described in this Final Decision, are reasonable.

16. Requiring that WPSC commence construction of the Weston Unit 4 within 12 months after it receives all necessary government permits and approvals is reasonable.

Conclusions of Law

The Commission has jurisdiction under Wis. Stat. §§ 1.11, 1.12, 196.02, 196.025, 196.395, 196.40, 196.49, 196.491, 196.52, and 196.795 to issue a certificate authorizing WPSC to construct and place in operation one 515 MW SCPC electric generating unit at the site described below, and to impose the conditions specified in this Final Decision. The final EIS prepared in this proceeding complies with Wis. Stat. § 1.11(2)(c).

Opinion

This proceeding involves the application by WPSC to construct a large-scale coal-fired generating facility. The applicant seeks approval for construction authority to build this generation facility.

In this docket, the Commission has attempted to balance responsibilities under the Power Plant Siting Law, Wis. Stat. § 196.491, and its paramount obligation to the consuming public.

In the Commission's consideration of this application, the Commission considered its longstanding resource policy priorities set forth in the Power Plant Siting Law – reliability, low cost, and environmental sensitivity. While each of these priorities is important individually, they are interrelated, and the Commission considered each policy priority in the context of this proceeding.

Project Description

WPSC proposes to build a coal-fired electric generating facility with a nominal generating capacity of 500 MW and actual capacity of 515 MW. A majority of the project would be owned and financed by WPSC. WPSC would have primary or exclusive responsibility for the plant's design, construction, start-up, testing, operation, and maintenance. The facility is expected to be in service by June 2008.

The assumed capacity factor for the proposed plant is approximately 85 percent. The plant is expected to have a life of 40 years, operating 24 hours per day and approximately 7,400 hours per year.

The new facility would use SCPC technology and would consist of a single 515 MW baseload SCPC unit to be installed as Weston 4 adjacent to the existing Weston Unit 3 on WPSC's Weston Generating Station (Weston) property straddling the boundary between the villages of Rothschild and Kronenwetter in Marathon County, Wisconsin. The project includes the coal-fired boiler and generator and also attendant cooling towers, electric transmission facilities, coal and ash handling facilities, railroad improvements on the Weston property, an auxiliary boiler to aid with plant start-up, and a new 8-inch natural gas pipeline for plant start-up and to serve the auxiliary boiler.

The railroad improvements will allow a complete coal train to move onto the property while reducing the potential for road traffic blockages near the site and the potential for noise from decoupling and coupling of rail cars. The existing Weston coal storage yard is to be expanded to the south. The proposed fuel is low-sulfur Powder River Basin sub-bituminous coal, the fuel used by the other Weston coal-fired units.

Feed water to supply the boiler makeup water will come from existing on-site wells. General plant service water and cooling water tower makeup water will come from the Wisconsin River through existing intake facilities. As part of the cooling system, the cooling towers are expected to evaporate about 4,400 gallons of river water per minute at maximum operating conditions, passing the heat from the boiler to the atmosphere through the steam as it moves through the turbines to the condenser. Potable water will be obtained from the village of Kronenwetter municipal water supply system.

Regarding the cooling towers that would be part of Weston 4, the Sierra Club argues that air-cooled condenser technology would be just as efficient and more environmentally sound because it would require less water from the Wisconsin River. WPSC argues the air-cooled technology is more expensive and less efficient, and is typically reserved for arid climates. As described in the final EIS, the DNR consumptive water loss approval process shows that the river has the capacity to provide the water for evaporation from the WPSC-proposed cooling towers without impact to the river itself. The cooling tower plume models in WPSC's application show that fogging and icing from the proposed wet cooling towers on neighboring properties and roads would be very low in amount and duration. The cooling towers as WPSC proposes are in the public interest.

The design of the Weston 4 electric transmission interconnection is expected to be the subject of a separate Commission proceeding in 2005.[1] The uncertainty of the transmission interconnection at this time is discussed under "Transmission Conditions," below.

The proposed project includes certain air pollution emission control equipment. Nitrogen oxide (NO_x) production is to be reduced through the use of low-NO_x burners, and by a selective catalytic reduction (SCR) system. Sulfur dioxide (SO_2) and particulate (PM) emissions will be controlled by a semi-dry, lime-based flue gas desulfurization (FGD) system ("dry scrubber") and a pulse-jet cleaned, fabric filter ("baghouse"). Hazardous air pollutant (HAP) emissions will also be controlled by the FGD system and the baghouse. Mercury emissions will be reduced by use of a sorbent injection system planned to be located between the air heater and the FGD system. The proposed air pollution control equipment is currently under consideration by DNR as Best Available Control Technology (BACT) or Maximum Achievable Control Technology (MACT) through the DNR air pollution control construction permit process.

With the proposed air pollution controls, bottom ash is to be collected and conditioned for reuse markets or placement in landfills, and fly ash is to be collected in the baghouse with the by-products from the dry scrubber and is expected to be landfilled.

Retirement of Existing Aging Units

The Commission recognizes the eventual need for the retirement of existing baseload, coal-fired generation given the ages of several generating units currently in operation by WPSC. The Commission, however, is not persuaded by the argument raised by certain parties

[1] PSC docket 137-CE-122, Gardner Park to Central Wisconsin 345 kilovolt (kV) line and new Central Park Substation, to be located in the vicinity of Shawano or Clintonville to the east.

concerning the reasonableness of requiring WPSC to commit to retire any specific generating units at this time.

Other than the recent Power the Future (PTF) proceeding, docket 05-CE-130, the Commission has not approved construction of any new baseload, coal-fired generation in Wisconsin since 1980. The evidence presented in this case reflects the fact that WPSC's existing fleet of baseload plants is aging. Continued operation of WPSC's aging baseload resources, in particular Pulliam Units 3 through 6 and Weston Unit 1, may be necessary over the next decade as transmission constraints within Wisconsin Upper Michigan System (WUMS) continue to limit the ability of Wisconsin load-serving entities to import electricity.

More likely, what may influence retirement is a combination of any or all of the following:

- Compliance with changing air emission regulations
- Equipment degradation and aging of critical systems at older units
- Changes to transmission constraints within WUMS
- Adding fewer wholesale customers than anticipated
- Updated load forecasts being at the low end of the current forecast range

Reasonable Needs of the Public; Forecasting Capacity and Energy Demand

An important threshold determination the Commission must decide is whether or not there is a need for the generation facility proposed by WPSC. Wisconsin's Power Plant Siting Law requires that a proposed facility satisfy "the reasonable needs of the public for an adequate supply of electric energy" in order to receive a CPCN per Wis. Stat. § 196.491(3)(d)2. To justify the need and timing of Weston 4, WPSC submitted four different growth forecasts for electric

demand and energy over the next 17 years and then provided optimal expansion plan results from the EGEAS computer model which identifies least cost generation expansion plans.

WPSC presented two different native load forecasts. Under WPSC's base native load forecast, demand is projected to grow by 1.7 percent for the 2002–2008 forecast period and by 2.0 percent for the subsequent 10 years. Under WPSC's high native load forecast, demand is projected to grow by 2.0 percent for the 2002–2008 forecast period and by 2.2 percent for the subsequent 10 years. These two native load forecasts are then combined with two different wholesale load growth projections, resulting in the four load growth forecasts modeled by WPSC in EGEAS. The varying levels of demand-side management (DSM) projected by WPSC and Commission staff are modeled in EGEAS as non-dispatchable generation sources beginning in 2003. When modeled in EGEAS, even considering the estimates of DSM savings, three of four basic demand and energy forecasts demonstrate an optimal need for new baseload supply resources beginning in 2008. Only in a lower demand growth rate scenario (base native load forecast and no new wholesale customers), does EGEAS pick Weston 4 later, but then it does so in 2009.

The Commission is not persuaded by the argument raised by certain parties questioning the reasonableness of WPSC's capacity and energy needs. Sierra Club criticizes the demand and energy forecasts as too high. The forecast growth rates in this docket are consistent with WPSC's historical growth patterns. WPSC's total demand has been growing 2.2 percent per year since 1998. WPSC's annual energy growth has been growing 2.4 percent per year since 1998. Annual energy growth can be an important predictor of the need for baseload generation facilities. Commission staff reviewed WPSC's four forecasts in the EIS and considered the

"base native load plus three new wholesale customers" forecast to be reasonable. For the period 2002 to 2012, Commission staff forecasted electric demand to grow about 2.3 percent annually, while the utility showed about a 2.0 percent annual increase in its base native load forecast with no new wholesale customers. The Commission believes that the 2.3 percent demand forecast used by Commission staff in EGEAS is reasonable.

Statutory Energy Priorities

The Commission in this proceeding must consider other options for meeting Wisconsin's energy needs when evaluating the proposed construction of Weston 4 consistent with the Energy Priorities Law. Wis. Stat. § 1.12(4) establishes energy priorities for Wisconsin and provides as follows:

> **1.12(4)** PRIORITIES: In meeting energy demands, the policy of the state is that, to the extent cost-effective and technically feasible, options be considered based on the following priorities, in the order listed:
>
> (a) Energy conservation and efficiency.
> (b) Noncombustible renewable energy resources.
> (c) Combustible renewable energy resources.
> (d) Nonrenewable combustible energy resources, in the order listed:
> 1. Natural gas.
> 2. Oil or coal with a sulfur content of less than 1 percent
> 3. All other carbon-based fuels.

In addition, Wis. Stat. § 196.025 declares that the Commission must implement these priorities in its energy-related decisions, to the extent "cost-effective, technically feasible and environmentally sound."

This Energy Priorities Law is not a mandate to state agencies that must be mechanically applied to achieve a specific outcome. In the Prefatory Note to 1993 Wisconsin Act 414, which enacted this law, the Legislature declares that it "does not want to create inflexible mandates or deprive decision makers of the discretion needed to respond appropriately to the circumstances

surrounding energy-related decisions." The Legislature explains that this law uses a "combination of directives and encouragements, while reserving substantial discretionary authority to the decision-maker." The statutory framework for analyzing whether approving a CPCN project would be in the public interest involves a number of factors beyond those specified in the Energy Priorities Law. In this case, the Commission is responsible for harmonizing the Energy Priorities Law and the Power Plant Siting Law, in order to determine what is in the public interest. The quantitative evidence presented in this proceeding supports the construction of new baseload generation to address WPSC's needs.

As noted in the dissent, prior decisions have interpreted these statutes to require that, in order to be selected and implemented, any given block of conservation or renewable resources must be of sufficient magnitude to entirely displace or delay the need for the construction project at hand.[2] This approach changed somewhat in the Elm Road proceeding in which the applicant's witness testified that 55 MW of conservation was cost-effective and technically feasible and the applicant committed to spend $20 million for implementing efficiency initiatives. Although this level of savings was not sufficient to displace that project, on the basis of evidence in that record, the Commission required that the applicant submit a program to capture 55 MW of additional energy efficiency as part of the CPCN.

In this proceeding the Commission must again apply these provisions. The Commission believes that the Energy Priority Law provides more flexibility when considering other options to meet energy demands. Wis. Stat. § 1.12(4) does not expressly provide that conservation or renewable resources must *displace or delay* a proposed project; the statute requires that such

[2]Docket 05-CE-117.

alternatives be considered if shown to be cost-effective and technically feasible. The plain language of the Energy Priorities Law together with the directive in Wis. Stat. § 196.025, require the Commission to maximize the overall use of the preferred options to the extent possible, even in incremental amounts. This is consistent with the obvious objective of the law, which is to deploy the more environmentally preferable options first when meeting Wisconsin's need for energy.

The record in this proceeding demonstrates that other options such as conservation and renewable resources do not displace the need for Weston 4. However, as discussed below, this record also establishes a basis to require implementation of additional options that are "cost effective, technically feasible, and environmentally sound" consistent with the Energy Priorities Law.

Energy Conservation and Efficiency

WPSC's forecast of future demand and energy needs already includes some level of energy efficiency, because WPSC uses an econometric forecasting method that relies upon historical electrical usage data. Incorporated in its historical usage data are the impacts of market effects (naturally occurring conservation) and energy efficiency services. WPSC estimates that embedded in its forecast are historical energy efficiency savings and 48 MW of new energy efficiency in 2008, the in-service date of the proposed power plant. Because some level of energy efficiency is included in WPSC's forecast, both the applicant and Commission staff attempted to estimate the amount of additional energy efficiency savings potential; *i.e,* the "achievable potential."

The applicant's energy efficiency analysis consists of three scenarios, which reflect differing assumptions about the rate at which consumers will adopt energy efficiency measures based on the level of program intervention. The applicant's analysis suggests achievable energy efficiency potential in 2008 for the Minimally Aggressive, Moderately Aggressive, and Highly Aggressive Scenarios of 10, 24 and 32 MW, respectively. The applicant's energy efficiency witnesses testified that this analysis shows that there is additional energy efficiency available in the WPSC service territory. WPSC's EGEAS modeling indicates that the Moderately Aggressive Scenario of 24 MW of energy efficiency savings by 2008 is part of the least-cost supply plan.

Commission staff also conducted an energy efficiency analysis. Commission staff provided three estimates, based on varying assumptions of economic and market potential, of achievable energy efficiency in 2008. Staff's most conservative scenario identified 50 MW of achievable potential, while its most aggressive scenario identified 256 MW. E4, an intervenor, provided an estimate of energy efficiency potential of 235 MW. Staff's most aggressive scenario, as well as the estimate of E4, is the upper bound of the range of estimates provided.

The estimates of energy efficiency potential provided all have shortcomings. WPSC's analysis used outdated information to derive the baseline end-use demand and energy and to populate its energy efficiency measures database. It also did not adequately address industrial process changes in its analysis. Commission staff's analysis is based on an outdated study, the Statewide Technical and Economic Potential (STEP) study completed in 1994. The STEP study also did not adequately address the industrial sector. E4's analysis applied national estimates of achievable potential to WPSC. This kind of analysis is a useful guide to the reasonableness of

other estimates of energy efficiency potential. However, because of regional differences, it is not appropriate to rely on the results of this type of analysis for planning purposes.

All three analyses identified additional energy efficiency potential, above that which is already included in WPSC's forecast. However, none of the estimates of achievable potential demonstrate that energy efficiency could reliably or cost-effectively serve to substitute, or postpone, Weston 4. On the other hand, the record demonstrates that increased intervention in the energy efficiency market would produce at least an additional 32 MW of cost-effective and technically feasible energy efficiency in WPSC's service territory by the end of 2008. Although this is more than the 24 MW of energy efficiency included in WPSC's optimal plan, WPSC's energy efficiency potential estimates are conservatively low. The 32 MW level of achievement would put savings in the WPSC service territory at the lower end of the range of the annual 0.5 to 1.0 percent of peak demand savings being achieved by electric utilities nationwide through actual experience. The Commission recognizes that implementation of recommendations from the Governor's Task Force on Energy Efficiency and Renewables regarding future directions for energy efficiency in Wisconsin may change the structure and funding level of statewide public benefits (known as Focus on Energy) efforts. As the dissent notes, the Commission's Strategic Energy Assessment recommended that energy efficiency and renewable resources should be pursued in separate proceedings. However, the Commission is statutorily obligated to apply the Energy Priorities Law in this proceeding and may not rely upon future efforts to meet this requirement. In addition, without increased energy efficiency efforts now, customers of WPSC would forgo the benefits of additional cost-effective energy efficiency until the recommendations of the Governor's Task Force could be implemented. It is therefore reasonable to require WPSC

to submit a plan to the Commission, by January 14, 2005, for the capture of at least an additional 32 MW in its service territory by the end of 2008. WPSC's plan should take into consideration existing public benefits efforts and address, to the extent possible, future energy efficiency directions. Any incompatibilities with future statewide efforts that result from these additional efforts, as well as additional efforts by other utilities, can be addressed concurrently in the future. Commissioner Garvin dissents.

Non-combustible Renewables

After energy conservation, the Energy Priorities Statute favors "non-combustible" renewable resources (wind, hydro, and solar) followed by "combustible" renewables (biomass). Wind power is the only non-combustible technology considered in this record. The record shows that the applicant has 10.4 MW of wind power capacity on line at the present time and has recently contracted to purchase another 70 MW of wind capacity from an IPP beginning in 2005, which the Commission finds encouraging. The EGEAS model chooses Weston 4 in 2008 ahead of any additional wind capacity.

Combustible Renewables

Generally, biomass as a combustible renewable energy alternative to Weston 4 did not compete well in the EGEAS modeling. Evaluating landfill gas energy generation, methane gas energy generation produced from dairy farm manure digesters, and solid biomass fuel generation at 50 MW using stoker boiler technology, staff found that the only biomass option selected by EGEAS in the examined years was approximately 20 MW from dairy farm manure digesters. RENEW Wisconsin (RENEW) proposed a 25 MW biomass gasifier be added to the Weston 4 project to create a "syngas" that could be co-fired (5 percent) with coal in the boiler. RENEW

placed on the record information about the potential fuel supply (wood) for the gasifier, including some studies illustrating its potential availability and cost. The gasifier would represent a large addition of equipment and cost to the Weston 4 project. A biomass gasifier would perform the same function if added to any coal-fired installation in the state. It might be more feasible if added to a less-efficient coal-fired unit. If tied directly to WPSC's proposal, it would not only add cost but would also likely require the preparation of a supplemental draft EIS and another final EIS.

The Commission finds that renewable resources over and above those to which the applicant has already committed and those necessary to meet the Renewable Portfolio Standard (RPS) are not a cost-effective alternative to Weston 4.

Non-renewable Combustible Energy Resources

The Commission considered whether natural gas-fired generation is a cost-effective or technically feasible alternative that could replace the need for new baseload generating facilities. The quantitative evidence presented in this proceeding supports the construction of new baseload generation to address WPSC's needs. The Commission's decision addresses its obligations under the Energy Priorities Law and the Power Plant Siting Law. It also reflects the Commission's policy judgment that while natural gas-fired generating facilities may be better suited for peak and intermediate load generation, coal-fired generation provides the most practical means to serve WPSC's needs for baseload capacity. No gas-fired, baseload facilities were presented in this record as either a cost-effective or technically feasible alternative to the applicant's coal-fired proposal.

There are qualitative factors set forth in Wis. Stat. § 196.491(3)(d) that also support the Commission's conclusions that new coal-fired generation is in the public interest. The evidence in this proceeding demonstrates the advantages of using cleaner burning coal technologies like SCPC as a baseload resource over natural gas-fired generation. The Commission believes also that it is in the public interest to have more reliable baseload generation in place sooner rather than later as a matter of public policy. Concerns over electric reliability are paramount today. Based on a number of qualitative and quantitative factors, the Commission believes that coal-fired generation provides the most cost-effective, prudent, and practical means of meeting WPSC's baseload capacity needs.

The applicant proposed a unit that it believes utilizes the best available control technology (BACT) or maximum achievable control technology (MACT) for several pollutant emissions. The Commission is not persuaded by the argument raised by the Sierra Club questioning the reasonableness of the WPSC's proposed BACT and MACT for the air permit, and the higher costs that would be associated with additional emissions control equipment. If DNR requires significantly different emission controls, the Commission might need to reopen this proceeding.

The evidence in this proceeding demonstrates the advantages of using cleaner burning coal technologies like SCPC as a baseload resource over gas-fired generation, but the Sierra Club also proposed the potentially less polluting integrated gasification combined-cycle coal technology (IGCC) instead of SCPC. An IGCC unit would break down coal into its basic constituents and produce a synthetic gas (syngas) for use in combustion turbines. However, IGCC is not competitive economically. It is more expensive to build than the proposed SCPC

plant and the IGCC technology is not yet proven from a reliability standpoint. For these reasons, the construction of the Weston 4 SCPC is reasonable when compared to an IGCC unit.

Finally, the Legislature stated that compliance with its Energy Priorities Law is based upon "the overall pattern of decisions made by each agency." Since the enactment of that law in 1994, the Commission has authorized the construction of over 6,900 MW of natural gas-fired generation and 20 MW of wind-based generation that have addressed peaking and intermediate capacity needs. In docket 05-CE-130, the Commission approved an additional 1,200 MW of coal generation. The total mix of energy sources that the Commission has approved over this time period shows a pattern of decisions for baseload, intermediate and peaking generating facilities that complies with the state's energy policy.

Transmission Conditions

Unrestricted operation of the Weston 4 generating unit requires several planned transmission lines to be in place. The previously planned transmission lines in the area include upgrades to the 138 kV system in the Wausau area, the Arrowhead – Weston 345 kV line, and the Morgan – Werner West 345 kV line. The American Transmission Company (ATC) interconnection study for Weston 4 also shows the need for a new 50-mile 345 kV line from the Gardner Park 345 kV substation at the Weston plant site to be interconnected with the Morgan – Werner West 345 kV line. The interconnection of these lines would involve a new substation, called Central Wisconsin, in the Shawano/Clintonville area.

Weston 4 is proposed to be in service in June 2008. The approved Arrowhead – Weston (Gardner Park) 345 kV transmission line is also planned to be in service June 2008. The new Gardner Park – Central Wisconsin 345 kV line and the Morgan – Werner West 345 kV line are

planned to be in service December 2009. Application for authority to construct both of these lines is expected in early 2005. The difference in time for the start-up of Weston 4 and completion of the planned transmission system improvements requires some special temporary operating guides and modified system protection techniques. One engineering approach, known as a transfer trip mechanism, would keep the system stable during special fault situations. This would allow Weston 4 to operate at full capacity until the Arrowhead to Weston 345 kV line and/or the Gardner Park to Central Wisconsin 345 kV line are in service. Alternatively, another technique would require Weston 4 to run at a lower output level depending on the system load, other generation in the area, and the amount of transmission capacity available.

The record indicates that reasonable operating guides and system protection methods are available such that the operation of Weston 4 would not be precluded prior to the completion of the necessary transmission system improvements. It is not necessary to require the implementation of specific operating guides or system protection methods at this time. However, the Commission will require WPSC to file a plan prior to Weston 4 start-up showing the operating guides and system protection methods it intends to use prior to the completion of the necessary transmission facilities.

Effects on Wholesale Competition

Horizontal Market Power

Wis. Stat. § 196.491(3)(d)7 requires the Commission to discern whether the addition of Weston 4 to WPSC's electric supply portfolio would have a material adverse impact on competition in the relevant wholesale electric service market. The Commission finds it would not. Prices, terms, and conditions of the capacity and energy being sold to native load customers

will be regulated by the Commission. No party contested this claim, and no Independent Power Producer (IPP) submitted a proposed PPA to challenge the Weston 4 project facility. Because WPSC has divested ownership of its transmission assets to the American Transmission Company and control to the Midwest Independent Transmission System Operator, there is no need for the Commission to investigate matters of vertical market power.

Generation Alternatives from Independent Power Producers

In EGEAS expansion plan computer modeling and its cost analysis, WPSC used proxy costs for IPP generation alternatives to Weston 4. Such proxy costs were based on recent contracts it had signed with IPPs, particularly Calpine Corporation. WPSC conducted no competitive bidding per se. WPSC believes use of such proxy costs and its market price insight is acceptable and reasonable in this proceeding. The Commission finds the use of proxy costs can, under certain circumstances, allow for meaningful comparison of potential generation alternatives. Commission staff's EGEAS modeling sensitivity analysis indicates that lower IPP costs did not affect the outcome of the EGEAS modeling. The EGEAS model still selected the optimal timing for Weston 4 to be 2008. Accordingly, the Commission finds at this time that the generation alternative evaluation method utilized by WPSC is reasonable for purposes of this proceeding.

WPSC and DPC Ownership Options

Dairyland Power Corporation (DPC) has an option to obtain 150 MW of ownership interest in Weston 4. The EGEAS modeling assumes two different load forecasts that allow WPSC to take 515 MW or 315 MW. The evaluated costs for both load forecasts are essentially the same.

The record indicates that DPC intends to acquire an ownership interest in Weston 4. However, if DPC does not exercise its option, WPSC could experience a temporary excess capacity situation. The Commission finds it reasonable to authorize construction of the Weston 4 unit at 515 MW. If WPSC and DPC fail to execute an agreement for DPC ownership of 150 MW of Weston 4, the Commission will require WPSC to notify the Commission and submit a plan for how it intends to address any potential excess capacity situation resulting from DPC's decision.

Project Cost

Construction of Weston 4 as authorized is estimated to cost $752,441,209 as shown below. The estimated cost is based on year-of-occurrence dollars. The Commission's authorization assumes a current return on Construction Work in Progress (CWIP) at WPSC's weighted cost of capital.

Item	Estimated Costs	
Engineering Costs		**$35,602,471**
Procurement Costs:		
Civil/Structural Equipment	$45,257,123	
Mechanical Equipment	$72,811,933	
Electrical Equipment	$13,897,651	
Control Equipment	$6,086,948	
Chemical Equipment	$7,389,774	
		$145,443,429
Construction and Fabrication/Engineering Contract Costs:		
Civil/Structural Erection	$93,602,099	
Mechanical Erection	$332,623,982	
Electrical Erection	$35,869,075	
Control Erection	$2,342,214	
Chemical Erection	$616,669	
		$465,054,039
Owner Construction Costs		**$47,832,534**
Construction Management Costs		**$58,508,736**
Total Cost		**$752,441,209**

Site Location

Wis. Stat. § 196.491(3)(d)3. requires that the Commission consider "alternate locations" before determining whether the location of a new project is in the public interest. In addition, Wis. Admin. Code § PSC 111.53(1)(e) requires that a CPCN application for a new generating plant contain "[a]t least two proposed sites for the proposed facility, including a description of the siting process and a list of the factors considered in choosing the alternatives." The Commission's rules further specify certain site-related information that must be provided for each proposed power plant site. Wis. Admin. Code § PSC 111.53(1)(f).

WPSC proposed two sites, a "North Site" and a "South Site," both on its own Weston Generating Station (Weston) property between Business USH 51 and the Wisconsin River, in the village of Kronenwetter, and possibly the village of Rothschild, in Marathon County, Wisconsin. Because they are both located on the Weston property, one to the north and one to the south of the existing coal handling facilities, the two sites have several aspects in common. They each share with existing plant the same planned coal storage and delivery systems, ash storage and transport systems, water intake facilities from the Wisconsin River and the ground water, waste water discharge facilities to the Wisconsin River, and property-bounded railroad improvements. For either proposed site, this sharing of facilities with the existing plant would reduce the environmental impact of a new plant by avoiding the need to build these items anew.

The Citizens' Utility Board (CUB) and the Sierra Club maintain that the two Weston 4 site alternatives are more like different plant configurations on the same parcel of land than separate and alternative sites. CUB states that the North and South Sites on the Weston property do not satisfy the Commission's statutory and rule requirements. It argues that site alternatives

must be geographically distinct and that these site alternatives do not demonstrate real differences.

However, the Commission has already determined that the fact that alternate sites may be geographically close together does not automatically render them unreasonable alternatives.[3] The Commission has accepted CPCN applications for numerous other power plant projects where the alternate sites have been close together. The Commission determines on a case-by-case basis whether proposed site alternatives are reasonable by applying two standards: (1) the site alternatives must each be feasible locations and (2) they must be sufficiently distinct to offer different packages of costs and benefits. With the benefit of a fully developed record on these site alternatives, the Commission has determined that the North Site and the South Site are distinct sites that can be considered alternatives to each other.

The North Site and South Site differ in several respects. They are about one-half mile apart. The North Site boiler and generator building would be adjacent to the existing Weston Unit 3 boiler and generator building, probably sharing one wall with the Weston 3 boiler and generator building. The South Site boiler and generator building would be south of the coal storage areas, mostly in what is now an agricultural field used most recently for pasturing or manure disposal. The North Site grounds are already graded from previous construction work but need some small buildings to be removed, while the South Site grounds are undisturbed except for agricultural field work. The North Site, located partially in the village of Rothschild and partially in the village of Kronenwetter, would have economic impacts different than the South Site, located totally in the village of Kronenwetter. The cooling towers for the North Site

[3] Commission Order Denying Petition to Review Interim Determination, Issued April 18, 2003, PSC Docket 05-CE-130.

would be at the north end of the Weston property, displacing a 46 kV electric line. The cooling towers for the South Site would be in the southwestern part of the property, displacing some woodland. The ground fogging from the North Site cooling towers could occasionally reach Business USH 51. The ground fogging from the South Site cooling towers could occasionally reach westward into the woodland in neighboring properties along the Wisconsin River but would not reach Business USH 51. The noise impact of Weston 4 would be different between the two sites. The North Site is located nearer to industrial operations of other companies on the north side of the Weston property while the South Site is located nearer to residences on the south side of the Weston property. In terms of power plant operations, the plant at the North Site would be able to utilize personnel currently working at Weston 3. The plant at the South Site would be too far away from Weston 3 to be able to share Weston 3 plant personnel efficiently. The South Site would also require longer coal conveyance equipment than the plant at the North Site. Finally, as discussed below, the North Site can be considered a "brownfield" site, but the South Site should be considered more of a "greenfield" site.

A site at Pulliam, in Green Bay, might be reasonable, but it does have potential problems of its own for this case. There appears not to be space for the additional rail facilities that could deliver the coal, for instance. There may also be difficulties associated with the quality of the water in the Fox River and Green Bay. Potential DNR permitting issues are unknown. Regardless, the Commission would need more information about a Pulliam plant before it could make its required determinations under Wis. Stat. § 196.491(3)(d). While the Commission could reject the Weston sites because they are unreasonable or have no adequate alternative, and order

the utility to investigate and propose a Pulliam property alternative, the record in this case indicates that this action is not necessary.

The Commission finds these to be determining factors in rejecting the need for consideration of a Pulliam site and in choosing between the two proposed alternatives, and selects the North Site alternative as the proper location for Weston 4. The record demonstrates that either of the two sites proposed would meet the standards established under Wis. Stat. § 196.491(3) and could be selected for construction of Weston 4. Both sites are reasonable in terms of performance and potential impact, and either can serve the public interest.

Brownfields Consideration

Under the recently-created Wis. Stat. § 196.491(3)(d)8, the Commission must determine that a plant it is preparing to approve uses brownfields to the extent practicable. Under Wis. Stat.§ 560.13(1)(a), a "brownfield site" is an "abandoned, idle, or underused industrial or commercial facility or site, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination." The use of brownfields is not required, but the applicant must consider brownfields first.

The applicant has proposed a brownfield site (the North Site) and a site (the South Site) that is essentially "greenfield" but also includes facilities from the existing industrial facility. A greenfield site would be a site where there has been no power plant or other industrial plant and where there is not yet an direct industrial impact. The North Site is almost all brownfield and industrially used land on the Weston Generating Station property. The South Site, on the same property but one-half mile to the south, utilizes the same brownfield acreages for the coal

delivery and handling facilities, but is otherwise "greenfield" in woodland and fields that have been subjected only to agricultural disturbance.

The Pulliam site described in Appendix A of the EIS can also be considered a brownfield site. However, it is not a reasonable site to consider for approval in this case, as discussed above.

Land Use and Economic Development

The WPSC property is zoned for industrial use, and the project area is a mix of residential and industrial/commercial. Both the villages of Kronenwetter and Rothschild have developed comprehensive land use plans which indicate planned expansions of the commercial areas. Located on the site of an existing power plant, Weston 4 will not unreasonably interfere with the orderly land use and development plans for the area.

Natural Gas Pipeline

WPSC will need to construct a new 8-inch diameter natural gas pipeline to connect Weston 4 to the interstate pipeline system of ANR Pipeline Company. Approximately two miles of the new gas pipeline will be located on privately-owned lands outside of the boundaries of WPSC's Weston property. WPSC identified potential gas pipeline routes in its application. Construction of the proposed natural gas pipeline along proposed route segments 1, 3, 4, and 6 will minimize disruption to residential and commercial areas during construction.

Health and Safety Payments

The enactment of 2003 Wisconsin Act 31 on July 15, 2003 significantly increased shared revenue payments to municipalities. Prior to Act 31, monetary compensation to municipalities and counties was based on a power plant's net book value, with a maximum payment of

$750,000 per year. As the power plant's net book value depreciated over time, the compensation declined.

In contrast, the new shared revenue program payments are based on a plant's megawatt output capacity and do not decline over time. The program includes additional shared revenue incentive payments which increase the dollars distributed to the municipalities and the county. Over the life of a plant, the municipalities and the county could receive millions more dollars than they would have received under the former program.

Annual payments under the new shared revenue program begin when a generating unit becomes operational. With the start-up of Weston 4 at the North Site, annual shared revenue payments to the villages of Kronenwetter and Rothschild will be $883,880 and $382,787, respectively. These payments will be in addition to the shared revenue payments that the villages currently receive for the existing Weston Generating Station.

On December 3, 2003, Wisconsin Act 89 was enacted. Act 89 eliminated Commission approval and the recovery in rates of mitigation payments after June 10, 2003 (Wis. Stat. § 196.20(7)). The statute states:

> "Mitigation payment" does not include payments made or in-kind contributions for restricted purposes to directly address health or safety impacts of the electric generating facility on the local unit of government.

An important issue the Commission must decide is what issues and payments would "directly address health or safety impacts". The Commission believes that these impacts would need to be directly linked to the construction and/or operation of the generation unit and exceed the compensation the municipalities would receive from shared revenue payments. It excludes generalized impacts caused by existing electric

generating facilities or monies that would be spent to the general benefit of the municipality apart from the generating facility direct impacts.

The villages of Kronenwetter and Rothschild have introduced evidence that Weston 4 would have quality of life, road safety, and emergency response (police, fire, and emergency medical services) impacts on the villages.

The Commission is not persuaded that the costs identified by the villages have a direct link to Weston 4. The quality of life issues did not take into account the economic benefit of the electric facility on the local municipalities or the compensation of shared revenue payments. Quality of life issues may not, by their nature, meet the "health or safety" standard for additional compensation. WPSC is responsible for road safety of the construction site and the Wisconsin Department of Transportation is responsible for ensuring the safety of state roads. Regarding police, fire, and EMT impacts, the record did not answer how the construction or operation of Weston 4 would directly cause these additional costs to the villages.

Commissioner Meyer dissents and finds that the villages of Kronenwetter and Rothschild would incur emergency response costs during the construction phase of Weston 4 that meet the statutory requirements for additional health and safety payments. Commissioner Meyer proposes that the Commission require the villages and WPSC to negotiate a single agreement to address these costs, not to exceed a specified dollar amount determined by the Commission.

Individual Hardships

The Commission must determine whether the project is in the public interest considering, in part, individual hardships, under Wis. Stat. § 196.491(3)(d)3.

Noise impacts

In this case, as with other power plant cases before the Commission, the potential for noise impacts has been a strong local concern. Concerns were expressed by residents south of the Weston property during the comment period on the draft EIS and by residents across Business USH 51 during the public hearings on the EIS and the proposal.

It appears that noise impacts on local residents would be greater if the plant were approved and located at the South Site because, in addition to the coal trains and coal handling noise, the noise of the boiler building and cooling towers would be further south and closer to the residents than it would be at the North Site.

The applicant was required during the application process to measure ambient noise at several agreed-upon measuring points according to the Commission's Noise Measurement Protocol and consultation with staff. The Protocol indicates that, if the project is approved, the same measurements should be taken again after the project has been constructed and operating. It is reasonable and in the public interest for the applicant to construct the project using all the noise attenuating techniques described in its application and in the EIS. It is also reasonable and in the public interest for the applicant to comply with the post-construction items required in the Noise Protocol. Post-construction noise measurements should be taken according to Protocol directions within three months of the date when Weston 4 is operational at full capacity.

Businesses locating in the area

The Sierra Club testified that businesses wanting to locate into the community might not be able to locate in the area of the power plant because of high existing air pollution levels resulting from Weston 4 and the other Weston units operating. As disclosed in the EIS,

(page 135, Table 6-7), levels of total suspended particulates from Weston 4 at the North Site would reach 100 percent of the National Ambient Air Quality Standard (NAAQS) approximately 900 meters to the northeast of the plant, levels of sulfur dioxide would reach 95.9 percent over 24 hours about 2,000 meters north of the plant, and levels of nitrogen dioxide would reach 98.3 percent about 770 meters northwest of the plant. It would be unlikely for a business that might emit these pollutants to qualify for required air permits for these locations but, as one locates farther away from the peak impact, the allowable increments of pollution would be greater and the chances of a business staying within its allowed increment toward the NAAQS would also be greater. The ability to locate would be affected mainly by the DNR air permitting processes.

In fact, if DNR determines that the proposed facility meets the requirements of Wis. Stat. ch. 285 (Wis. Stat. § 196.491(3)(d)3 and 4.), the Commission does not have the authority to determine if the design or location of the proposed plant is in the public interest or if it will have any undue adverse impact on environmental values because of the impact of air pollution.

Combined impacts on near neighbors

Homeowners across Business USH 51 from the Weston property, particularly those across from the coal handling facilities, have testified about levels of coal dust, emissions, and noise impact that they have experienced from the existing Weston generation facilities. They expressed concern that the impacts would increase with the additional coal handling and emissions with Weston 4 in operation. At least one property owner asked to have their home bought by the utility.

WPSC indicated on the public hearing record that it is WPSC's policy to discuss with landowners their concerns and the possibility of purchasing properties. Properties have already been acquired in this manner south of the existing facilities. The purchase of such properties would allow WPSC to create or expand buffer space between the facilities and local residents. The Commission supports the utility's negotiations to purchase the homes of families that would experience undue hardship, both to alleviate the hardship that would result from the project and to expand a buffer area between the power plant facilities and the other area residents.

DNR Permits

Under Wis. Stat. § 196.491(3)(e), before issuing a CPCN, the Commission must determine that DNR can grant the permits that have been identified under Wis. Stat. § 196.491(3)(a)3.a. as required for the construction or operation of the facility. The Commission has no jurisdiction over the DNR permits, but it remains aware of the status of the DNR permits that are required before any construction may begin and those that are of significant importance to the ability of the plant to operate if it receives a CPCN.

In this case, the only DNR permit that is required before start of construction is the air pollution control construction permit pursuant to Wis. Stat. ch. 285 and Wis. Admin. Code chs. DNR 405-408. DNR's draft air permit was submitted for the record in this proceeding (Exhibit 42), and DNR held its own hearing on the draft permit on August 12, 2004. In the meantime, DNR also contributed to the draft and final joint EIS with the Commission and testified at the Commission's public hearings, which served not only as CPCN hearings but also as hearings on the final EIS. The Commission takes administrative notice that the DNR issued a Record of Decision (ROD) on August 17, 2004, concluding that it has complied with the WEPA

requirements. The ROD released all prepared DNR permits to be issued in compliance with WEPA.

In the public hearings on the CPCN, the Sierra Club argued that WPSC's air permit application and the DNR draft permit were not correct. However, if DNR determines that a project will meet its air pollution requirements under Wis. Stat. ch. 285, the Commission has no authority under Wis. Stat. §§ 196.491(3)(d) and 4 to determine that a project would have undue adverse air pollution impacts.

The combustion of coal involves the release of numerous air pollutants. During the Commission hearings, concerns relating to these pollutants were expressed both by expert witnesses testifying on behalf of the parties and by members of the public. Mercury emissions are regulated under DNR air pollution control construction permits. DNR considers mercury to be a hazardous pollutant, requiring the use of maximum achievable control technology to meet the emission limits set by permit. DNR's air pollution permits, though, do not yet address $PM_{2.5.}$ This is because the U.S. Environmental Protection Agency (EPA) has set National Ambient Air Quality Standards for $PM_{2.5}$ emissions, but has not yet instituted a program for determining non-attainment areas and thus has not taken steps yet to reduce emissions. DNR currently intends to submit a state implementation plan to the EPA regarding $PM_{2.5}$ in 2005.

Sierra Club indicated that it intended to intervene in DNR's air permit proceeding. DNR indicated during the CPCN hearing that the Sierra Club's air permit comments would be considered in its preparation of the final air permit.

Other DNR permits for the Weston 4 project relate to the Wisconsin River water intake, water loss to the atmosphere, water discharge to the river, property storm water control,

modification of high capacity wells, and modifications of the existing "Plan of Operation" to accept Weston 4 ash at the Legner Landfill ash disposal site. These permits, approvals, and permit modifications have all been issued except the approval for consumptive water loss. DNR Bureau of Endangered Resources has already indicated (EIS, Exh. 96, pp 210-211) that the project will not affect endangered, threatened, or special species of concern. The water loss approval has not been controversial in the Weston case and is expected to be issued within 30 days of this order as specified in Wis. Stat. § 30.025(4).

Adequacy of the EIS

Wis. Stat. § 1.11(2) requires the Commission to prepare a detailed EIS for any "major action" it is considering that would significantly affect the quality of the human environment. The Commission has adopted rules that categorize the types of actions it undertakes for purposes of complying with this statute. Wis. Admin. Code § PSC 4.10(1) and Table 1, item f., provide that a proposal to construct "an electric generation facility fueled by coal" is a major action, and an EIS is required.

Commission staff has collaborated with DNR staff to prepare an EIS about Weston 4. The staff of the two agencies developed agency contacts to answer questions, sent mailings and press releases soliciting comments, questions, or concerns, and held scoping sessions in the area of the plant at which members of the public could learn about the project and could relate particular concerns about its environmental impacts. The Commission and DNR then released a joint draft EIS dated March 17, 2004, containing professional analysis of Weston 4 as progress towards compliance with the agencies' WEPA requirements. The draft EIS, 263 pages long with a second volume of 18 figures, was distributed broadly to interested persons. The agencies

encouraged people to respond to it with concerns and criticisms during a 45-day public comment period that ended on May 10, 2004. Following the comment period, Commission and DNR staff prepared a final EIS that took into consideration the comments received as well as new information collected. The final EIS, signed on June 24, 2004, was issued in early July 2004 as additional progress towards compliance with the Commission's and DNR's WEPA requirements. It corrected, updated, and expanded the draft EIS to about 370 pages, including copies of the written comments received and agency staff responses to those comments. Figures in the second volume of the final EIS were also updated and corrected.

The Commission held hearings on WPSC's CPCN application and on the final EIS in August, 2004, including hearings for the public in the area of the proposed project on August 10, 2004. These hearings were held at least thirty days after the issuance of the final EIS.

Some of the parties argued that the EIS's discussion of the environmental impacts of Weston 4 is inadequate. CUB articulated dissatisfaction with the EIS's description of potential alternative sites and transmission interconnections, and RENEW testified that the final EIS should have included a discussion of the potential effects of the "peak oil" phenomenon. In addition, the Sierra Club contended that the EIS was not adequate regarding the appropriateness of the DNR air permit review.

After hearing these concerns and reviewing the detailed record prepared in this case, much of which concerns environmental impacts, the Commission has determined that the final EIS adequately describes the potential direct and indirect impacts on the human environment. The EIS has helped the Commission with determinations under Wis. Stat. § 196.491(3)(d)3. and 4. It also helped members of the public who testified at the public hearing. The portions of

the EIS related to air impacts describe the situation as it was during the Commission review period and indicate that the final air permit is to be issued by DNR, outside the Commission's purview. DNR's August 17, 2004, Record of Decision also indicates that the joint final EIS is adequate from the point of view of its permits. In those areas where the likely environmental consequences associated with Weston 4 are unknown, the EIS identifies the uncertainties. The draft DNR air permit (Exhibit 42) has since responded to the uncertainties related to air pollution. The Commission recognizes DNR's continuing regulatory oversight of the project with respect to air pollution and, by the conditions imposed in this order, defers to DNR permitting decisions that will mitigate environmental impacts.

For these reasons, the Commission finds that the draft and final EIS comply with the requirements of Wis. Stat. § 1.11 and Wis. Admin. Code ch. PSC 4.

Certificate of Public Convenience and Necessity

WPSC may commence construction of the proposed Weston 4, a 515 MW SCPC electric generating unit, as described in WPSC's project application, at an estimated cost of $752,441,209.

Order

1. WPSC may construct Weston 4 at the North Site, as described in the project application with an estimated in-service date of June 1, 2008.

2. WPSC shall commence construction of Weston 4 within 12 months after receiving all necessary federal, state, and local permits and approvals.

3. Within three months of the date when Weston 4 is operational at full capacity, WPSC shall repeat the noise measurements that were taken before project approval, shall

measure the maximum noise generated at the site with all units on, and shall measure the noise at the site with all units off. WPSC shall report its findings to the Commission using the same format as its pre-approval noise studies.

4. WPSC shall submit a plan by January 14, 2005, for the capture of a minimum of 32 MW of additional cost-effective energy efficiency by the end of 2008.

5. WPSC shall submit quarterly progress reports to the Commission that summarize the status of the construction, the status of land acquisitions, the status of environmental control activities, and the overall percent of physical completion of the project. Each report shall include a summary of consultations with DNR and other agencies concerning the issuance of permits. The reports shall list dates, names, and the results of each contact and the company's progress in implementing prescribed environmental protection or control standards. The first report for Weston 4 is due for the quarter ending December 2004. The reports shall be filed within 31 days after the end of each quarter and shall continue until the project is fully operational.

6. WPSC shall report to the Commission the intended operating strategy, conditions, techniques, and limits on the utilization of Weston 4 during the period of limited transmission access. This information, as developed, should be reported in the standard quarterly progress reports. This report shall be submitted to the Commission no later than one year in advance of projected commercial operation.

7. WPSC shall notify the Commission within five working days of the date when construction commences on Weston 4. WPSC shall notify the Commission, in writing, within 10 days of any decision not to proceed with the approved project or to enter into any partnership or other arrangement with another entity with respect to the project.

8. WPSC shall provide the Commission with copies of all final executed agreements related to the operation or ownership of the project when they are obtained. Upon request, WPSC shall provide the Commission with copies of all final executed agreements related to the construction.

9. WPSC shall promptly inform the Commission of any substantial scope or design modifications in the approved facilities, or if the expected cost exceeds the authorized cost by more than 10 percent.

10. The estimated cost for construction of Weston 4 in year of occurrence dollars is $752,441,209.

11. Upon completion of construction for Weston 4, WPSC shall file with the Commission a complete report of the final costs segregated by plant account and shall explain any variances between the authorized and actual costs.

12. This Final Decision takes effect on the day after it is mailed. The CPCN for Weston 4 takes effect only when DNR issues all permits and approvals that it identified, pursuant to Wis. Stat. § 196.491(3)(a)3.a., as being required prior to construction of the facility.

13. If DPC terminates its option to purchase 150 MW of Weston 4, WPSC shall notify the Commission in writing within 10 days of such termination and, within 60 days, shall provide the Commission with a plan for addressing any potential excess capacity situation resulting from DPC's decision.

14. WPSC shall construct the natural gas pipeline along route segments 1, 3, 4, and 6, as identified in the project application.

Dated at Madison, Wisconsin, _____

By the Commission:

_____

Lynda L. Dorr
Secretary to the Commission

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See attached Notice of Appeal Rights

Notice of Appeal Rights

Notice is hereby given that a person aggrieved by the foregoing decision has the right to file a petition for judicial review as provided in Wis. Stat. § 227.53. The petition must be filed within 30 days after the date of mailing of this decision. That date is shown on the first page. If there is no date on the first page, the date of mailing is shown immediately above the signature line. The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

Notice is further given that, if the foregoing decision is an order following a proceeding which is a contested case as defined in Wis. Stat. § 227.01(3), a person aggrieved by the order has the further right to file one petition for rehearing as provided in Wis. Stat. § 227.49. The petition must be filed within 20 days of the date of mailing of this decision.

If this decision is an order after rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not an option.

This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

Revised 9/28/98

COMMISSIONER ROBERT GARVIN
DISSENTING OPINION
Docket 6690-CE-187
October 7, 2004

The majority opinion adopts a new interpretation of the Energy Priorities Law, Wis. Stat. §1.12, in this proceeding that invites considerable uncertainty for future applicants seeking a Certificate of Public Convenience and Necessity (CPCN). In previous CPCN proceedings[4] , the Commission has attempted to harmonize the directives of the Energy Priorities Law with those of the Power Plant Siting Law, Wis. Stat. § 196.491(3) by applying a practical legal standard that requires the Commission to decide whether or not there is enough energy conservation, renewable resources, or other cleaner-burning fuels to "cancel or delay" the need demonstrated in proceeding.

The evidence presented in this case demonstrates that energy conservation, renewable resources, or other energy priorities listed in the Energy Priorities Law (Wis. Stat. § 1.12), or their combination, are not cost-effective or technically feasible alternatives that could totally displace the Weston 4 project. Nevertheless, the majority has ordered the applicants, as a condition for approving the CPCN, to submit a plan to capture a minimum of 32 MW of additional cost-effective energy efficiency by the end of 2008 (Order Point 5 at p. 35) I respectfully dissent from this particular finding and order and the accompanying discussion in the Final Decision.

My concern is that the inclusion of an order point which directs the applicants to submit a plan to fund an additional 32 MW in this proceeding creates significant uncertainty as to the manner in which this Commission intends to apply the Energy Priorities Law in future

[4] Dockets 05-CE-117 and 05-CE-130.

proceedings. I also believe that this legal interpretation is inconsistent with the Commission's previously stated understanding of the Energy Priorities Law, which requires the utilization of alternatives only when they could totally displace the proposed project. Moreover, the majority's decision may be interpreted as a significant departure from the Commission's decisions in prior CPCN cases in its application of the Energy Priorities Law that could add not just uncertainty but significantly higher costs to ratepayers. Under the majority's reasoning, I cannot determine what cost or legal constraints would prevent a future Commission from imposing whatever requirement it finds reasonable in order to carry out its broadly stated goal of "maximizing the overall use of preferred options" in interpreting these laws.

In the Power the Future CPCN proceeding (dockets 05-CE-117 and 05-CE-130) , the Commission directed the applicant to file a similar plan to achieve energy efficiency based on their voluntary agreement to spend $20 million over the next decade to support energy efficiency activities. Those proceeding are distinguishable from the present case because the applicant in this proceeding has not agreed to make such an investment as a condition of CPCN approval. In our previous decision, the Commission did not require the capture of energy efficiencies beyond what the applicants were proposing to achieve based on the interpretation of the Energy Priorities Law that the law does not require such efforts unless they would displace the need for the applicant's proposal.

This order point also contradicts the Commission's new policy determination set forth in the recently issued Strategic Energy Assessment (SEA Report) that endorses a different forum than a CPCN proceeding for the Commission to consider whether to authorize a load serving entity to make additional energy efficiency investments under Wis. Stat. § 196.37 (3). By ordering the applicant to submit a plan to capture an additional 32 MW as part of the Weston 4

project application, the majority has contradicted its own recommendations in the SEA Report not to continue to try to deal with the Energy Priorities Law on a CPCN case-by-case basis. The SEA Report states that the "Commission will explore different methods for implementing the Energy Priorities Law that would lead to more effective, overall statewide implementation rather than the current case-by-case consideration." SEA Report at p. 149. This commitment was in accordance with the Commission's unanimous conclusion in the same SEA report that "there appears to be a developing consensus that energy efficiency and renewable resource considerations as outlined in the state's Energy Priorities Law may be better considered in a separate proceeding outside of specific CPCN applications." SEA Report at p. 130.

Finally, the majority's determination also conflicts with the recent report of the Governor's Energy Efficiency and Renewables Task Force, which recommends a separate Commission proceeding to set energy efficiency targets and funding levels, in lieu of trying to do so in individual CPCN dockets. (Report of the Governor's Task Force on Energy Efficiency Renewables, September 2004, p. 20.)

For these reasons, I respectfully dissent from the majority's position.

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Robert M. Garvin
Commissioner